

CSWC – MacQuinn Gravel Permit denial appeal – Review Standard #3

To: Lamoine Board of Appeals

From: John Holt, on behalf of Cold Spring Water Company

Re: Harold MacQuinn appeal of denial of Gravel Permit application by Planning Board

Date: March 12, 2018

Review Standard #3 – “...will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds”

The applicant has submitted a great deal of testimony in support of its contention that the proposed 86- acre expansion of the currently permitted 22- acre Kittredge Pit would have no adverse impact on either the quality or quantity of groundwater available from “cold spring”, so-called, to the Cold Spring Water Company to supply its 54-member homes and organizations with safe and adequate amounts of water. That claim is based almost entirely on the notion that the sole source of water for Cold Spring is a perched water table embedded within the sand and gravel esker which straddles the properties of MacQuinn, Cold Spring and others to the south of Cold Spring. The applicant has speculated on the extent of this perched water table, concluding that nearly all of it lies to the west and south of Cold Spring itself. Both Summit and Robert Gerber, in his peer review of Summit’s data, surmise that a small portion of the clay lens does extend in a northwest direction into a portion of MacQuinn’s property. Indeed, much of additional testing which Gerber requested of Summit – the installation of additional test wells and the water balance study – was for the purpose of determining just how far this marine clay lens undergirding Cold Spring extended into MacQuinn’s property. Please refer to the Gravel Permit Application Plan E.10. Both Summit and Gerber concluded that the area where Cold Spring test wells #5 and #6 are located is over of the same perched water table that also includes the unnamed spring further north along the blueberry field road. (See pages 283-284 of the application and also Figure 4 and page 295). However, Robert Gerber noted that water table elevations noted by CSWC test well #5 seemed an anomaly (see pp 590-591 of the application), as the water table there consistently measured some ten feet below the elevation of Cold Spring. Test well # 6, further northwest and closer to MacQuinn’s land and quite close to its well MW3- 2012, seemed to fit the model well as its reported water table elevation at the time when the application was initially considered was in the low 130’s.

However, data from the last two year’s readings at test well #6 indicate that in dryer portions of the year, the water table measurements have dipped below 120 feet, again, well below Cold Spring’s. Meanwhile, all of the long standing test wells (#1-#4) of Cold Spring have been very consistent in measuring water table levels in the low-to-mid 130’s even in times of drought. (See spreadsheet of CSWC test well measurements March 2016-Feb 2018). This newer data for CSWC test wells 5 & 6 suggest that the perched water table

underlying Cold Spring does not extend beyond the Cold Spring property into the MacQuinn property, and would require some alteration in Gerber's Elevation Contours of Shallow Ground Water Table found on page 599.

While, therefore, I am largely convinced by the data that Cold Spring will not be adversely affected by the proposed excavation, I am concerned that so much of the hydrogeological data has been focused on Cold Spring that the applicant has provided limited or no information regarding other water concerns.

There is, for example, no data provided, other than an elevation number of 137.8 feet above mean sea level, on the unnamed spring along the blueberry road from which flows water that feeds into wetlands to the east and further to the Archer Brook watershed. If it is in fact not part of the same perched water table as Cold Spring, as CSWC test wells #5 & #6 seem to indicate, then what is its source? If a different perched system, what are its limits and how will the proposed excavation affect it?

What about the impact on the deeper water table at the eastern end of the parcel. Gerber asserts (see page 590 of the application) that the deeper water table merges with a perched water table $\frac{1}{4}$ mile north-northeast of Cold Spring. How can that be so if the Cold Spring perched water table does not extend anywhere near that place. Theoretical models based on old data must be modified in light of new data.

Easily overlooked in this application is that there are only two test wells on the easterly half of the northern portion of the proposed excavation area. Do we really know enough of the hydrogeologic secrets of this 25 acre portion of the proposed site to conclude with certainty that the ground water will not be adversely affected? Will shallower overburden result in Archer Brook being fed more quickly during prolonged periods of rain and the fuller brook continue to flood portions of Pinkham Flats Road? None of these and similar issues have been addressed.

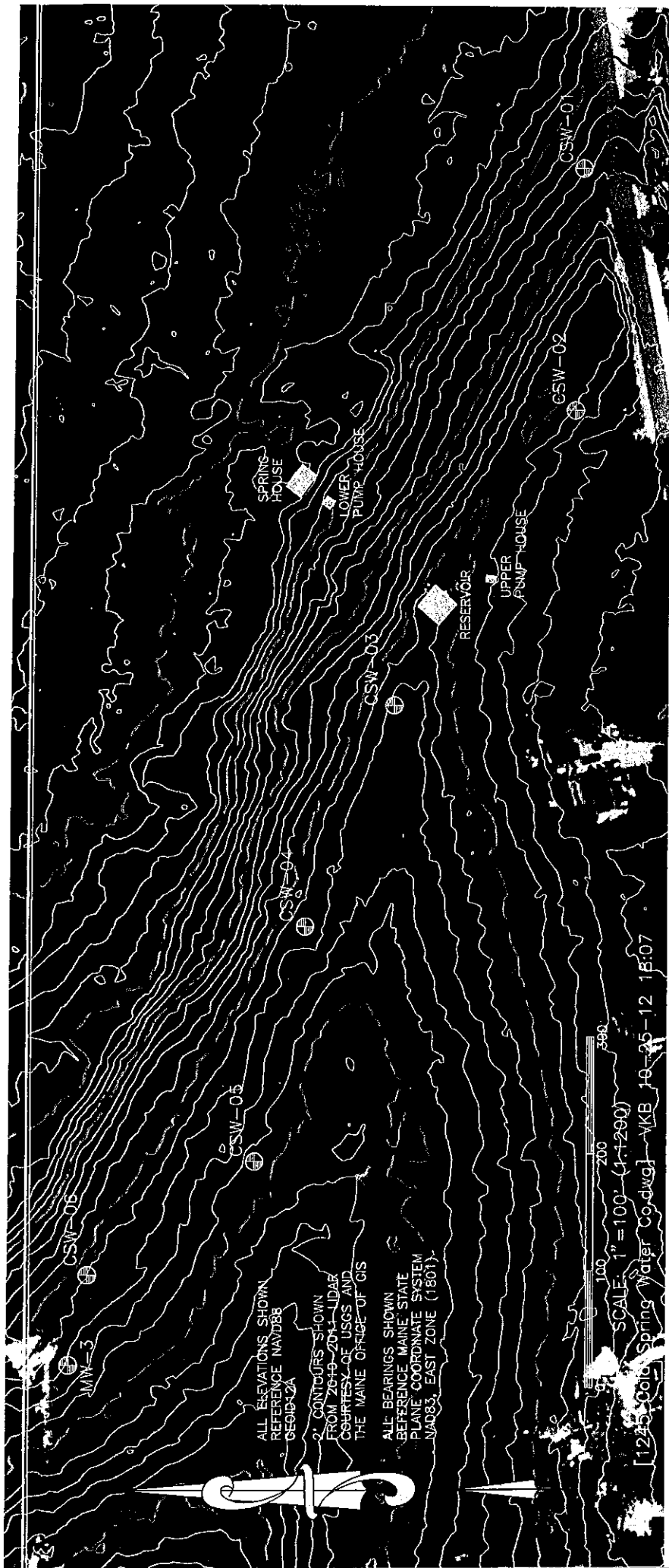
I remind the Appeals Board that the gravel application is for 108 acres, expanding the currently permitted acres by about 86 acres. The existing pit is but 22 acres: about 17 acres at western edge and about 5 acres at the eastern edge. (See the Gravel Pit Plan E1.0 for existing pit limits.) Nearly 40 acres of the requested 86 acre expansion is located on area which already has a Site Plan Review Permit (See the Gravel Pit Plan E 1.0, the diagonal lines). I would point out that there are no useful test wells on this 40 acre portion of the site. In fact there is only 1 well, MW1, which is not deep enough to reach the deeper water table. The water table elevation for this entire area has not been determined. State law requires this to be done, and even requires one well for every five acres of permitted pit. The application is deficient in this regard. Summit's characterization of the water table

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underlying the entire 108 pit area is deficient for this reason; it utilizes wells that were required for exploration of the south forty acres and far eastern area. Who knows what perched water tables may exist in this 40 untested area or what watershed divide exists beneath the surface? There is once large wetland within its bounds and two wetlands abutting it. Is it not likely that clay deposits are to be found, perhaps even a more significant water divide?

My point is that it is the burden of the applicant to demonstrate that the proposed excavation will not affect adversely existing groundwater and springs. Cold Spring is only one spring and, while obviously significant, only one of the many issues which this application ought to have addressed. I would also note that the applicant has had three additional years to undertake, at his own initiative, further hydrogeological investigation of the site, but has not. Further, there is no submitted record that any of the several test wells required by the Planning Board have been regularly monitored since their initial installation to record the water table elevations, something that seems important in light of ongoing significant and very visible extraction on already permitted portions of the site.

There remains much uncertainty regarding the impact of this massive excavation project on groundwater and springs, related wetlands and neighboring streams. I ask the Appeals Board to find that the submitted evidence and lack of it supports the Planning Board's finding that review standard #3 has not been met.



Cold Spring Water Company - Lamaine, Maine Monitoring Well Locations and Elevations - October 24, 2012

Feature	Latitude	Longitude	Northing ²	Easting ²	Top of Cap Elev.		Cap Height		Grade Elev. at Casing	
					NAVD88 ³	NGVD29 ⁴	Above Grade	NAVD88 ³	NAVD88 ³	NGVD29 ⁴
BLUEVILLE ⁵	44 28 53.22468	68 19 45.74858	297042.822	1028779.791	128.997	129.623	n/a	n/a	n/a	n/a
CLAYVILLE ⁵	44 28 53.22241	68 19 45.75078	297042.592	1028779.632	129.705	130.341	n/a	n/a	n/a	n/a
CSW-01	44 28 50.80923	68 19 42.03508	296798.798	1029049.512	148.350	148.986	3.0	145.4	146.0	146.0
CSW-02 ⁶	44 28 50.87044	68 19 44.92690	296804.557	1028839.856	161.506	162.142	3.2	158.3	158.9	158.9
CSW-03	44 28 52.40627	68 19 48.42990	296959.546	1028585.582	167.367	168.003	3.1	164.3	164.9	164.9
CSW-04	44 28 53.16325	68 19 51.05201	297035.803	1028395.335	165.844	166.480	3.1	162.7	163.4	163.4
CSW-05	44 28 53.59312	68 19 53.82112	297078.917	1028194.500	171.535	172.171	2.9	168.6	169.3	169.3
CSW-06	44 28 55.01804	68 19 55.15352	297223.006	1028097.612	164.293	164.929	2.9	161.4	162.0	162.0
WV-3	44 28 55.17439	68 19 56.21783	297238.679	1028020.424	167.356	167.992	2.9	164.5	165.1	165.1

¹ All locations reference the National Spatial Reference System NAD2011, NAD 83(2011) epoch 2010.00

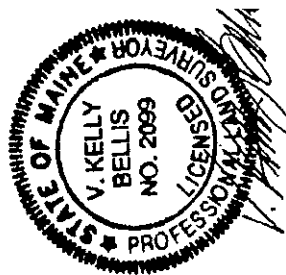
² Maine State Plane Coordinate System, East Zone (1801)

³ All elevations reference the North American Vertical Datum of 1988; Ellipsoidal heights converted to orthometric heights using Geoid12A (95% confidence +/- 0.026)

⁴ Note: The National Geodetic Vertical Datum of 1929 has been superseded for the past 25 years by NAVD88. Values given calculated using Corpscon

⁵ Elevation of northeastern rim of submerged vertical pipe in midst of Spring House - water level at 11:42 AM 10/24/2012 131.54

⁶ Elevation of highest / easternmost edge of CSW02's well cap



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SURVEYING C

17 UNION STREET ELLSWORTH, ME 04601
V. Kelly Bellis, PLS 2099 E-mail address: f

COLD SPRING

Well #1		Well #2		Well #3	
Water to	Elevation	Water	Change	Water	Change
Casing Top		Elevation	(in feet)	Elevation	(in feet)
Latitude	44 28 50.80923				
Longitude	68 19 42.03508				
	NAVD88				
Top of casing	148.35				
Land grade	145.4				
DATE					
3/17/2016	14.81	133.54	-0.12	27.97	
4/17/2016	14.75	133.60	0.06	27.86	
5/17/2016	15.15	133.20	-0.40	28.30	
6/17/2016	15.61	132.74	-0.46	28.80	
7/17/2016	16.60 dry	131.75	-0.99	29.31	
8/17/2016	16.60 dry	131.75	0.00	30.01	
9/16/2016	16.60 dry	131.75	0.00	30.55	
10/16/2016	16.60 dry	131.75	0.00	30.86	
11/17/2016	16.60 dry	131.75	0.00	30.76	
12/14/2016	16.60 dry	131.75	0.00	29.60	
1/17/2017	15.21	133.14	1.39	28.40	
2/17/2017	15.25	133.10	-0.04	28.38	
3/17/2017	15.20	133.15	0.05	28.38	
4/17/2017	15.00	133.35	0.20	28.19	
5/17/2017	14.51	133.84	0.49	27.65	
6/17/2017	15.11	133.24	-0.60	28.35	
7/17/2017	15.80	132.55	-0.69	29.00	
8/17/2017	15.80 DRY	132.55	0.00	29.71	
9/17/2017	15.80 dry	132.55	0.00	30.13	
10/17/2017	15.80 dry	132.55	0.00	30.65	
11/17/2017	15.80 dry	132.55	0.00	30.30	
12/18/2017	15.80 dry	132.55	0.00	29.50	
1/16/2018	14.80	133.55	1.00	28.06	
2/16/2018	14.58	133.77	0.22	27.70	

COLD SPRING

Well #4	Well #5		Well #6		Well #7		Well #8		Well #9		Well #10		Well #11		Well #12		Well #13		Well #14		Well #15		Well #16		Well #17		Well #18		Well #19		Well #20		Well #21		Well #22		Well #23		Well #24		Well #25		Well #26		Well #27		Well #28		Well #29		Well #30		Well #31		Well #32		Well #33		Well #34		Well #35		Well #36		Well #37		Well #38		Well #39		Well #40		Well #41		Well #42		Well #43		Well #44		Well #45		Well #46		Well #47		Well #48		Well #49		Well #50		Well #51		Well #52		Well #53		Well #54		Well #55		Well #56		Well #57		Well #58		Well #59		Well #60		Well #61		Well #62		Well #63		Well #64		Well #65		Well #66		Well #67		Well #68		Well #69		Well #70		Well #71		Well #72		Well #73		Well #74		Well #75		Well #76		Well #77		Well #78		Well #79		Well #80		Well #81		Well #82		Well #83		Well #84		Well #85		Well #86		Well #87		Well #88		Well #89		Well #90		Well #91		Well #92		Well #93		Well #94		Well #95		Well #96		Well #97		Well #98		Well #99		Well #100		Well #101		Well #102		Well #103		Well #104		Well #105		Well #106		Well #107		Well #108		Well #109		Well #110		Well #111		Well #112		Well #113		Well #114		Well #115		Well #116		Well #117		Well #118		Well #119		Well #120		Well #121		Well #122		Well #123		Well #124		Well #125		Well #126		Well #127		Well #128		Well #129		Well #130		Well #131		Well #132		Well #133		Well #134		Well #135		Well #136		Well #137		Well #138		Well #139		Well #140		Well #141		Well #142		Well #143		Well #144		Well #145		Well #146		Well #147		Well #148		Well #149		Well #150		Well #151		Well #152		Well #153		Well #154		Well #155		Well #156		Well #157		Well #158		Well #159		Well #160		Well #161		Well #162		Well #163		Well #164		Well #165		Well #166		Well #167		Well #168		Well #169		Well #170		Well #171		Well #172		Well #173		Well #174		Well #175		Well #176		Well #177		Well #178		Well #179		Well #180		Well #181		Well #182		Well #183		Well #184		Well #185		Well #186		Well #187		Well #188		Well #189		Well #190		Well #191		Well #192		Well #193		Well #194		Well #195		Well #196		Well #197		Well #198		Well #199		Well #200		Well #201		Well #202		Well #203		Well #204		Well #205		Well #206		Well #207		Well #208		Well #209		Well #210		Well #211		Well #212		Well #213		Well #214		Well #215		Well #216		Well #217		Well #218		Well #219		Well #220		Well #221		Well #222		Well #223		Well #224		Well #225		Well #226		Well #227		Well #228		Well #229		Well #230		Well #231		Well #232		Well #233		Well #234		Well #235		Well #236		Well #237		Well #238		Well #239		Well #240		Well #241		Well #242		Well #243		Well #244		Well #245		Well #246		Well #247		Well #248		Well #249		Well #250		Well #251		Well #252		Well #253		Well #254		Well #255		Well #256		Well #257		Well #258		Well #259		Well #260		Well #261		Well #262		Well #263		Well #264		Well #265		Well #266		Well #267		Well #268		Well #269		Well #270		Well #271		Well #272		Well #273		Well #274		Well #275		Well #276		Well #277		Well #278		Well #279		Well #280		Well #281		Well #282		Well #283		Well #284		Well 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#740		Well #741		Well #742		Well #743		Well #744		Well #745		Well #746		Well #747		Well #748		Well #749		Well #750		Well #751		Well #752		Well #753		Well #754		Well #755		Well #756		Well #757		Well #758		Well #759		Well #760		Well #761		Well #762		Well #763		Well #764		Well #765		Well #766		Well #767		Well #768		Well #769		Well #770		Well #771		Well #772		Well #773		Well #774		Well #775		Well #776		Well #777		Well #778		Well #779		Well #780		Well #781		Well #782		Well #783		Well #784		Well #785		Well #786		Well #787		Well #788		Well #789		Well #790		Well #791		Well #792		Well #793		Well #794		Well #795		Well #796		Well #797		Well #798		Well #799		Well #800		Well #801		Well #802		Well #803		Well #804		Well #805		Well #806		Well #807		Well #808		Well #809		Well #810		Well #811		Well #812		Well #813		Well #814		Well #815		Well #816		Well #817		Well #818		Well #819		Well #820		Well #821		Well #822		Well #823		Well #824		Well #825		Well #826		Well #827		Well #828		Well #829		Well #830		Well #831		Well #832		Well #833		Well #834		Well #835		Well #836		Well #837		Well #838		Well #839		Well #840		Well #841		Well #842		Well #843		Well #844		Well #845		Well #846		Well #847		Well #848		Well #849		Well #850		Well #851		Well #852		Well #853		Well #854		Well #855		Well #856		Well #857		Well #858		Well #859		Well #860		Well #861		Well #862		Well #863		Well #864		Well #865		Well #866		Well #867		Well #868		Well #869		Well #870		Well #871		Well #872		Well #873		Well #874		Well #875		Well #876		Well #877		Well #878		Well #879		Well #880		Well #881		Well #882		Well #883		Well #884		Well #885		Well #886		Well #887		Well #888		Well #889		Well #890		Well #891		Well #892		Well #893		Well #894		Well #895		Well #896		Well #897		Well #898		Well #899		Well #900		Well #901		Well #902		Well #903		Well #904		Well #905		Well #906		Well #907		Well #908		Well #909		Well #910		Well #911		Well #912		Well #913		Well #914		Well #915		Well #916		Well #917		Well #918		Well #919		Well #920		Well #921		Well 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CSWC – MacQuinn Gravel Permit denial appeal – Review Standard #6

To: Lamoine Board of Appeals

From: John Holt, on behalf of Cold Spring Water Company

Re: Harold MacQuinn appeal of denial of Gravel Permit application by Planning Board

Date: March 12, 2018

The Cold Spring Water Company owns property (Map 3 / Lot 30) which shares a boundary of about 4,000 feet with Harold MacQuinn, Inc. Moreover, most (50) of the 54 establishments which are members of the Water Company, which, incidentally, is incorporated legally as a consumer cooperative, are located on surrounding properties and are within the ¼ mile distance of the MacQuinn parcel: 16 members on Mill Road, 25 on Lamoine Beach Road, 7 on Shore Road, and 2 on Douglas Highway. The remaining four members are located on Shore Road, a little further distance than ¼ mile, but, nevertheless, also subject to noise related to excavation and sorting activity at the MacQuinn site. Most of you are aware that among the members of Cold Spring is the Lamoine Consolidated School, where nearly all of the children of the town spend much of the weekday time for most of the year.

Review Standard #6 – “...will not adversely affect surrounding properties”

When finding that the proposed expansion of the Kittredge Pit would adversely affect surrounding properties, the Planning Board cited two documents which had been submitted at the Public Hearing for this application: Population Density Considerations of the Kittredge Pity Expansion, by Lamoine resident Bruce Gillett, and the survey of realtors in the area undertaken by sociologist Dr. Kathryn Gaianguet. I, too, would commend these documents for your consideration and include copies of them as part of this testimony.

Expanding the existing gravel operations some 600 feet in a southerly direction brings the pit's boundary to within 800 feet of portions of Lamoine Beach Road, Mill Road and Douglas Highway along which many residents live. This section of town is not only densely populated, as Bruce Gillett's Population Density study clearly documents, but is home also to Lamoine Consolidated School, where the children of the community spend most of their weekdays for most of the year. The Lamoine Baptist Church, the Lamoine Fire Department, the Forest Hill Cemetery and the Lamoine Grange and Community Theater, all are located in this area which can justifiably lay claim to being the very center of the community. Denying the Gravel Permit for expansion further into this community recognizes that no matter how carefully extraction is undertaken over the years, the site is just plainly inappropriate for the proposed activity. The focus must not be limited to what takes place within the boundaries of MacQuinn's property. The larger view which takes seriously the existence and concerns regarding quality of life and property values of a vital neighboring community must be seen. Context is significant. To permit the massive expansion of the

CSWC – MacQuinn Gravel Permit denial appeal – Review Standard #6

Kittredge Pit crosses the line from a reasonable coexistence of gravel extraction and community life to an unreasonable incursion into the life of an historic neighborhood of Lamoine.

I, too, would note that testimony of individuals at the Public Hearing was nearly unanimous in affirming that the proposed expansion posed an adverse impact upon the values of their property and the quality of daily life. I hope that you will read all of the public testimony which the Planning Board received. Many of those who spoke and/or submitted testimony are members of Cold Spring Water Company and live within the area considered as neighboring properties.

One area which the applicant did not address in the application was the impact on the microclimate to the south of the proposed excavation area. Those of us who live along Lamoine Beach Road and Mill Road at an elevation of about 100 feet are aware of the mitigating effect the 200+ foot hill to our north has on the northeast storms and winds which affect us. I am sure that the old tree growth on the Water Company property along the 4,000 foot boundary will suffer greatly if the hill to its north is excavated.

I submit also a copy of the Hancock County Superior Court decision of December 5, 2012, which upheld the Lamoine Planning Board's denial of a gravel permit to Doug Gott & Sons, Inc. on the Stephen's lot, so-called. Some of you currently on the Appeals Board were members of the Appeals Board at that time. You may recall that the Appeals Board concurred with the Planning Board on this matter, that the proposed expansion of Gott's B & H pit in the direction of three residences to the north would adversely impact those properties. Mr. Bearor was the attorney for Doug Gott & Sons who challenged the decision of the Planning Board and Appeals Board in court. Their challenge was denied. I think a careful reading of the Court's decision and reasons for ruling such will assure the Appeals Board that the Planning Board acted correctly in finding that the vastly larger Kittredge Pit expansion will have an adverse impact on the surrounding properties and that the overwhelming public testimony in opposition is legitimate and compelling.

Population Density Considerations of the Kittredge Pit Expansion

By Bruce Gillett, 50 Ice House Lane, Lamoine, ME

As presented to the Lamoine Planning Board
27 September, 2017

A study of the population density in the immediate vicinity of Harold MacQuinn Inc.'s proposed Kittredge Pit expansion on Map 3 Lot 31 can help to answer the question of whether the development will have negative effects on the community. It was decided by the Lamoine Planning Board, and later supported by the Lamoine Appeals Board and Hancock County Superior Court in 2012 in the Gott VS. Town of Lamoine suit that the proposed gravel pit by Doug Gott and Sons, in a nearby location, would adversely affect surrounding residential properties. In their 2011 findings, the Planning Board wrote,

Were a permit granted for this proposed pit, it would expand the sand and gravel extraction area yet further into land zoned essentially for residences, and radically change the topography of the parcel, including removal of trees and topsoil from portions of the lot, further despoiling the visual appeal of the area for years to come.

(<http://www.lamoine-me.gov/Town%20Hall/Boards/Appeals%20Board/CaseIndex/Gott0211/gottfindings051011.pdf>)

Will the Kittredge Pit expansion present the same density concerns?

In this study I surrounded the proposed pit expansion with a ¼ mile (1,320 feet) ring and listed all dwellings within that boundary. Land is included, but not counted. I chose the ¼ mile measure because in the 2006 Upjohn Study (<http://lamoine.org/wp-content/uploads/2014/07/STONECO-GRAVEL-MINE-ECONOMIC-IMPACT.pdf>) it was found that dwellings at or less than this distance suffered the most economic impact, losing 25% of their property value. The purpose of my study is not to assess economic impact, but the UpJohn Study suggests that the quarter mile measure seems to have significance when it comes to distance of dwellings from gravel pits.

Please refer to pages 4-6. Within the ¼ mile boundary there are 70 homes. These homes, according to the 2016 Town of Lamoine tax records, have a combined value of \$8,607,500. This does not include land nor community buildings. If the Baptist Church, Lamoine Consolidated School, Fire Station and Grange are included, (all within ¼ mile) the total value is \$10,556,400.

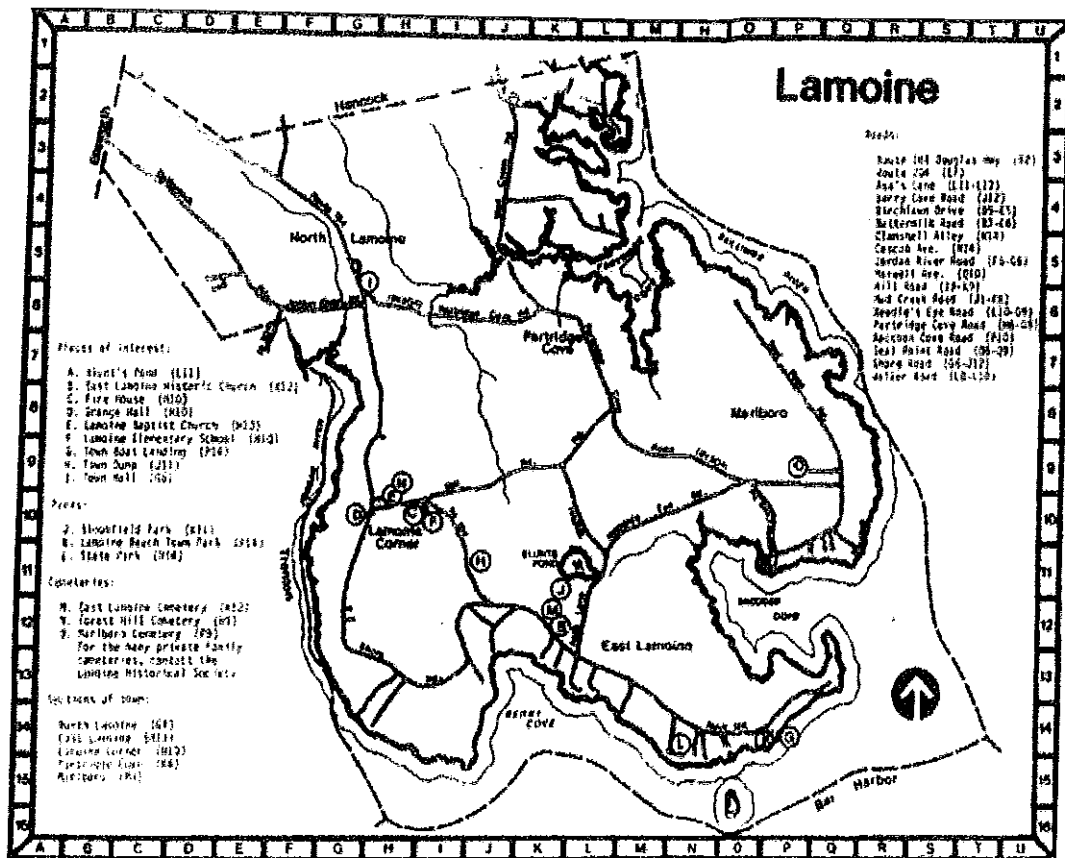
In these 70 homes live 148 people by actual count. This figure represents 9.24% of Lamoine's population based on the 2010 census of 1,602. If the 2010 census is used for the estimate of individuals in these 70 homes, (2.25 persons per household x 70) the total is 158 persons. Since the actual count is lower, it will be used in this study. There are however, likely to be more people within ¼ mile during business hours due to the 24

teachers and staff, and enrollment of approximately 100 students (<http://www.lamoineconsolidated.org/>). Uncounted are the people who may populate the Grange Hall, Baptist Church and Fire Station at any given time. Compare the totals for the subject area to that of the denied Gott pit, on pages 7 and 8.

On page 9 the total acreage of the $\frac{1}{4}$ mile surrounding the proposed pit is computed. This totals 450.37 acres or .7037 square miles containing the 148 persons. This results in 210 persons per square mile. Lamoine has a total area of 11,000.2 acres with a population (2010) of 1602, for a population density of 93.2 persons per square mile. This is less than half the density of the area surrounding the proposed pit. During school hours, the density surrounding the proposed pit will increase to $124 + 148 = 272$ persons/.7037 square mile or 386 persons per square mile, *four times* Lamoine's average density. The state of Maine's population density is 37.5 persons per square mile, less than 10 percent of this amount.

Other high density areas of Lamoine exist, but none are as concentrated or contain as many year-round residents. For example, of the 70 subject properties, 54 or 77% list Lamoine billing addresses. Two non-Lamoine addresses are Ellsworth P.O. boxes which are not included in the 54 but can be presumed to belong to year-round residents (Map 3 lots 22 and 24-2). Contrast this with the properties on both sides of Marlboro Beach Road between Raccoon Cove Rd and Maxwell Avenue, another high density area, where only 50% of taxpayers have Lamoine billing addresses (see page 10).

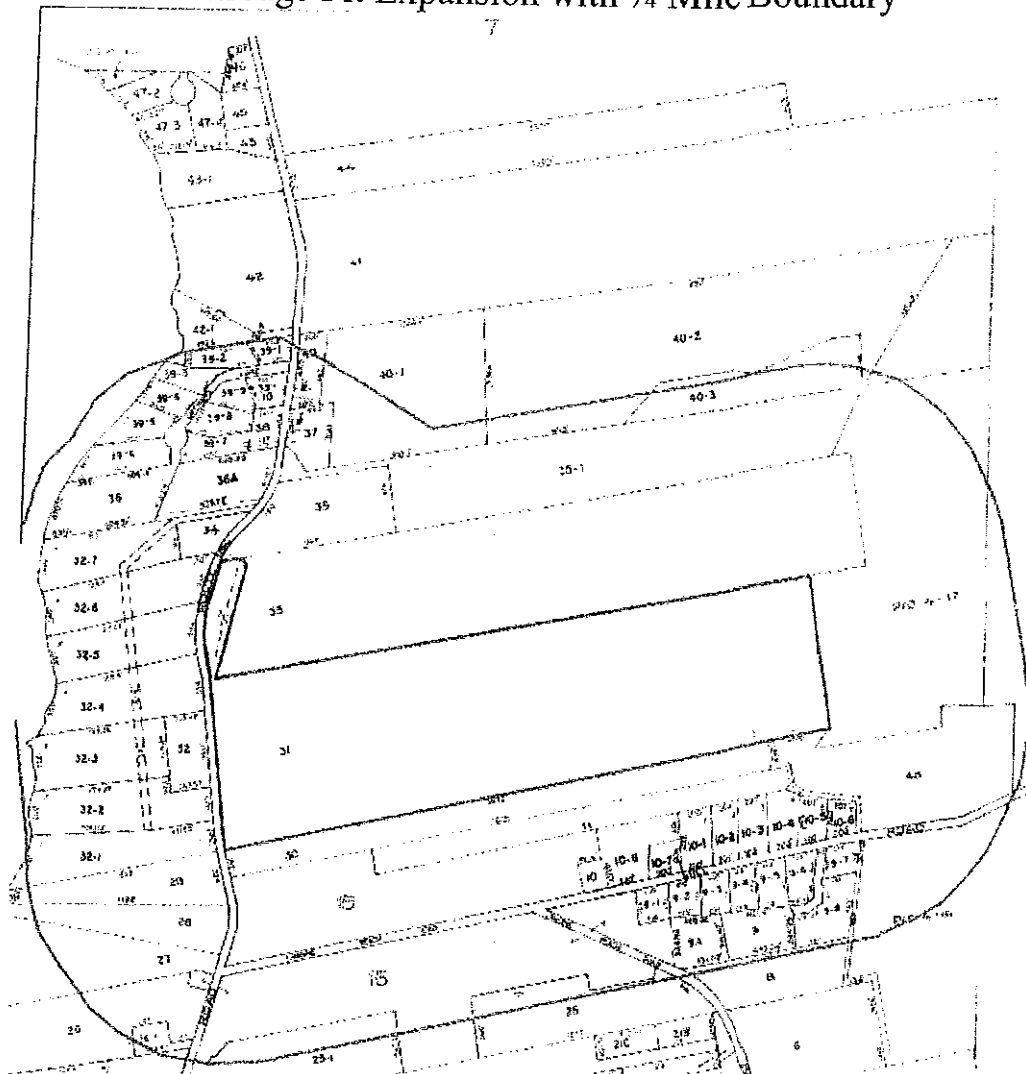
A map included in Lamoine's 1996 Comprehensive Plan clearly shows the concentration of important Lamoine landmarks within the subject area.



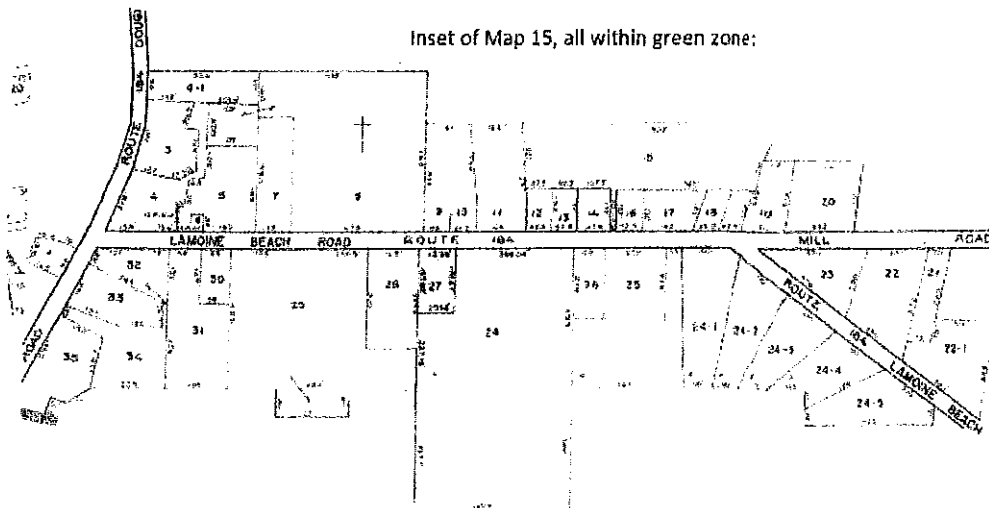
Conclusion: Whether or not the population density of 210-386 persons per square mile is too high for coexistence with an industrial-scale gravel pit is up to our Planning Board, but it is obvious that if Lamoine has a population center, this is it. It is also obvious that compared to the 2012 Gott decision, which affected 48 dwellings using the same methods, (see page 7 and 8) that the court will probably agree to a similar conclusion by the Planning Board. Therefore, it is my recommendation that the MacQuinn Kittredge pit expansion site plan and gravel permits be rejected.

Kittredge Pit Expansion with 1/4 Mile Boundary

7



Inset of Map 15, all within green zone:

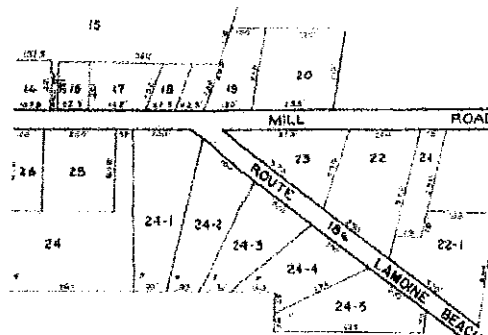
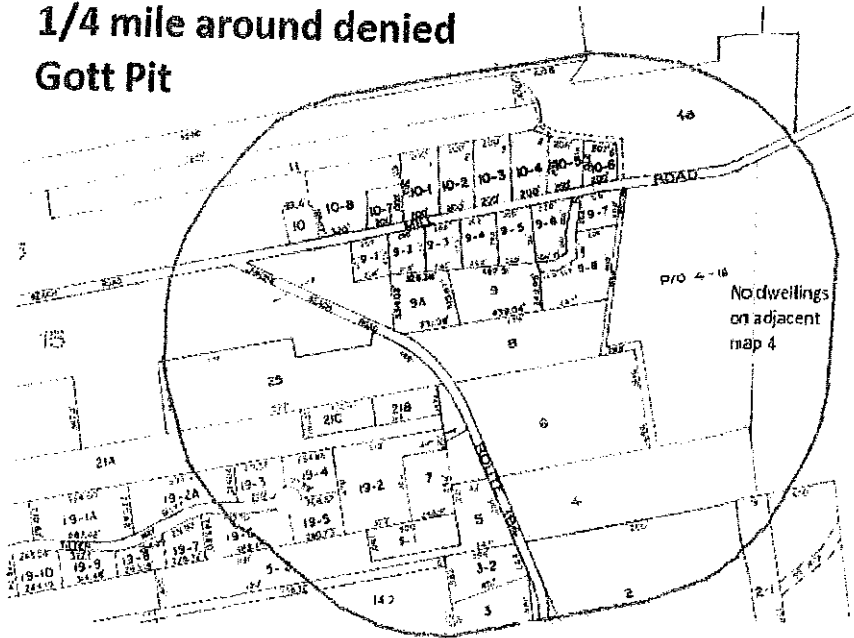


Properties within 1/4 Mile of Proposed Kittredge Pit Expansion

Map	Lot #	Local?	address	Land value	Building Value	notes
3	26	Y	1017 Shore Rd	\$120,200	\$110,200	
3	26-1	Y	1021 Shore Rd	\$53,400	\$143,000	
3	27	Y	1003 Shore Rd	\$197,600	\$109,500	
3	28	Y	955 Douglas Highway	\$74,100	\$122,200	
3	29		Douglas Highway			
3	32	N	907 Douglas Highway	\$54,900	\$291,400	
3	32-1		Douglas Highway			
3	32-2		Douglas Highway			
3	32-3		Douglas Highway			
3	32-4		Douglas Highway			
3	32-5		Douglas Highway			
3	32-6		Douglas Highway			
3	32-7		Douglas Highway			
3	34	Y	857 Douglas Highway	\$54,900	\$120,300	
3	35	Y	839 Douglas Highway	\$65,400	\$149,300	
3	35-1		Douglas Highway			
3	36		Douglas Highway			
3	36-A		Douglas Highway			
3	37		Douglas Highway			
3	38	Y	819 Douglas Highway	\$45,000	\$139,500	
3	39-1	Y	5 Orchard Lane	\$59,000	\$187,700	
3	39-2	Y	15 Orchard Lane	\$80,500	\$247,200	
3	39-3	Y	29 Orchard Lane	\$79,600	\$206,800	
3	39-4	Y	33 Orchard Lane	\$82,800	\$265,000	
3	39-5		Orchard Lane			
3	39-6	N	39 Orchard Lane	\$90,200	\$497,100	
3	39-7	Y	35 Orchard Lane	\$59,200	\$173,600	
3	39-8	Y	32 Orchard Lane	\$59,400	\$417,300	
3	39-9	N	14 Orchard Lane	\$59,000	\$183,500	
3	39-10	Y	6 Orchard Lane	\$59,000	\$295,400	
3	40	Y	802 Douglas Highway	\$45,300	\$85,400	
3	40-1		off Rt 184			
3	40-3		off Rt 184			
3	9-1	Y	31 Mill Rd	\$41,200	\$119,000	
3	9-2	Y	41 Mill Rd	\$41,400	\$90,100	
3	9-3	Y	49 Mill Rd	\$41,500	\$95,800	
3	9-4	Y	57 Mill Rd	\$41,700	\$113,300	
3	9-5	Y	65 Mill Rd	\$41,800	\$98,100	
3	9-6	Y	71 Mill Rd	\$41,700	\$100,300	
3	9-7	Y	83 Mill Rd	\$41,300	\$120,200	
3	9-8	N	79 Mill Rd	\$46,900	\$35,400	
3	9	N	14 Memory Lane	\$45,500	\$89,600	
3	9-A	Y	9 Memory Lane	\$46,600	\$154,500	
3	10	Y	22 Mill Rd	\$35,400	\$45,600	
3	10-1	Y	48 Mill Rd	\$42,300	\$123,700	
3	10-2	Y	54 Mill Rd	\$42,300	\$125,000	
3	10-3	Y	64 Mill Rd	\$42,300	\$140,500	
3	10-4	Y	70 Mill Rd	\$42,400	\$98,400	
3	10-5	N	78 Mill Rd	\$42,000	\$90,200	
3	10-6	Y	86 Mill Rd	\$41,400	\$93,300	
3	10-7	Y	38 Mill Rd	\$40,000	\$172,500	
3	10-8	Y	30 Mill Rd	\$47,000	\$125,400	
15	1	Y	1009 Shore Rd	\$31,000	\$110,700	
15	3	Y	950 Douglas Highway	\$43,700	\$134,400	
15	4	N	6 Lamoine Beach Rd	\$44,200	\$81,300	
15	4-1		Lamoine Beach Rd			
15	5	Y	18 Lamoine Beach Rd	\$44,300	\$11,800	
15	6	Y	14 Lamoine Beach Rd	\$15,700	\$74,900	
15	7		24 Lamoine Beach Rd			Baptist Church
15	8		Lamoine Beach Rd			Forest Hill Cemetery

Map	Lot #	Local?	address	Land value	Building Value	notes
15	11	Y	52 Lamoine Beach Rd	\$33,600	\$20,500	
15	12	N	58 Lamoine Beach Rd	\$26,000	\$81,800	
15	13	Y	60 Lamoine Beach Rd	\$26,200	\$23,200	
15	14	Y	64 Lamoine Beach Rd	\$26,200	\$59,500	
15	15		Lamoine Beach Rd			
15	16	Y	70 Lamoine Beach Rd	\$24,400	\$16,900	
15	17	N	76 Lamoine Beach Rd	\$29,100	\$43,900	
15	18		Lamoine Beach Rd			
15	19	N	6 Mill Rd	\$34,900	\$41,300	
15	20	Y	14 Mill Rd	\$41,500	\$166,600	
15	21	Y	27 Mill Rd	\$30,200	\$83,400	
15	22	N	102 Lamoine Beach Rd	\$42,900	\$120,900	
15	22-1	Y	114 Lamoine Beach Rd	\$44,200	\$149,900	
15	23	Y	90 Lamoine Beach Rd	\$39,500	\$115,100	
15	24		Lamoine Beach Rd			Lamoine School
15	24-1	Y	77 Lamoine Beach Rd	\$42,000	\$141,400	
15	24-2	N	87 Lamoine Beach Rd	\$41,500	\$121,300	
15	24-3	N	97 Lamoine Beach Rd	\$44,000	\$81,600	
15	24-4	Y	103 Lamoine Beach Rd	\$44,000	\$81,600	
15	24-5	N	111 Lamoine Beach Rd	\$44,200	\$71,200	
15	25	Y	69 Lamoine Beach Rd	\$33,300	\$131,200	
15	26	Y	63 Lamoine Beach Rd	\$32,500	\$50,100	
15	27		43 Lamoine Beach Rd			Fire Station
15	28	Y	39 Lamoine Beach Rd	\$44,100	\$117,100	
15	29	Y	23 Lamoine Beach Rd	\$50,100	\$230,400	
15	30	Y	15 Lamoine Beach Rd	\$39,100	\$108,600	
15	31	Y	11 Lamoine Beach Rd	\$44,900	\$108,600	
15	32		7 Lamoine Beach Rd			Lamoine Grange
15	33	Y	1008 Shore Rd	\$43,400	\$92,300	
15	34	Y	1010 Shore Rd	\$44,300	\$37,900	
15	35	N	1016 Shore Rd	\$43,800	\$115,700	
Lamoine address tax pinent 54				Dwellings total value (2016 tax)	\$9,607,500	While the assessed value of homes are included, the real purpose of this study is to compute the number of people living within 1/4 mile of the proposed pit. The real estate value of buildings is a proxy for the stake our citizens have in this area
				total dwellings	70	
				Baptist Church (building)	\$236,800	
				Lamoine School (building)	\$1,117,900	
				Fire Station (building)	\$292,200	
				Lamoine Grange (building)	\$92,300	
				Community Bldg's total	\$1,948,900	
				Dwellings+Community Bldg's	\$10,556,400	
				Average Dwelling value	\$122,964	
				Average household size, 2010 fed census	2.25	
				Counted population	148	
				Percent of Lamoine pop	9.24%	Lamoine pop 1,502, 2010 census
				Compare the population of this area to the population of people within 1/4 mile of the denier		
				Gott Pt. The denial of the	Gott pt. upheld in Supreme Court,	
				should be reason enough to	reject this application	

**1/4 mile around denied
Gott Pit**



Denied Gott Pit Border Properties

A	B	C	D	E	F
Map	Lot #	address	Land value	Building Value	notes
3	2	180 Lamoine Beach Rd	\$155,600	\$76,800	
3	3	185 Lamoine Beach Rd	\$46,100	\$21,300	
3	3-2	177 Lamoine Beach Rd	\$46,000	\$26,900	
3	5	5 Jaycee Dr	\$46,400	\$142,900	
3	5-1	13 Jaycee Dr	\$45,100	\$107,500	
3	5-2	33 Jaycee Dr	\$49,700	\$50,600	
3	7	153 Lamoine Beach Rd	\$47,400	\$76,200	
3	9	14 Memory Lane	\$46,500	\$89,500	
3	9-1	31 Mill Rd	\$41,200	\$119,000	
3	9-2	41 Mill Rd	\$41,400	\$90,100	
3	9-3	49 Mill Rd	\$41,500	\$35,800	
3	9-4	57 Mill Rd	\$41,700	\$113,300	
3	9-5	65 Mill Rd	\$41,800	\$90,100	
3	9-6	71 Mill Rd	\$41,700	\$100,300	
3	9-7	83 Mill Rd	\$41,300	\$120,200	
3	9-8	79 Mill Rd	\$46,900	\$35,400	
3	9-A	9 Memory Lane	\$46,800	\$164,600	
3	10	22 Mill Rd	\$36,400	\$45,600	
3	10-1	48 Mill Rd	\$42,300	\$123,700	
3	10-2	54 Mill Rd	\$42,300	\$125,000	
3	10-3	64 Mill Rd	\$42,300	\$110,500	
3	10-4	70 Mill Rd	\$42,400	\$98,400	
3	10-5	78 Mill Rd	\$42,000	\$90,200	
3	10-6	86 Mill Rd	\$41,400	\$93,300	
3	10-7	38 Mill Rd	\$40,000	\$172,500	
3	10-8	30 Mill Rd	\$47,000	\$125,400	
3	11	off Durphy Brook Rd			
3	14-2	Off Shore Rd			
3	19-2	Lamoine Beach Rd			
3	19-3	Tilden Way			
3	19-4	Tilden Way			
3	19-5	Tilden Way			
3	19-6	Tilden Way			
3	21A	1046 Shore Rd	\$58,800	\$134,700	
3	21B	5 Tall Pine Drive	\$44,600	\$117,000	
3	21C	23 Tall Pine Drive	\$47,800	\$163,000	
3	25	121 Lamoine Beach Rd	\$98,500	\$180,300	
3	48	92 Mill Rd	\$51,000	\$30,400	
15	14	54 Lamoine Beach Rd	\$26,200	\$59,500	
15	15	Lamoine Beach Rd			
15	16	70 Lamoine Beach Rd	\$24,400	\$15,900	
15	17	76 Lamoine Beach Rd	\$29,100	\$43,000	
15	18	Lamoine Beach Rd			
15	19	6 Mill Rd	\$34,900	\$41,300	
15	20	14 Mill Rd	\$41,500	\$166,600	
15	21	27 Mill Rd	\$30,200	\$83,400	
15	22	102 Lamoine Beach Rd	\$42,000	\$120,900	
15	22-1	114 Lamoine Beach Rd	\$44,200	\$149,900	
15	23	90 Lamoine Beach Rd	\$38,500	\$115,100	
15	24	Lamoine Beach Rd			
15	24-1	77 Lamoine Beach Rd	\$42,000	\$141,400	
15	24-2	97 Lamoine Beach Rd	\$41,500	\$121,300	
15	24-3	97 Lamoine Beach Rd	\$44,000	\$81,600	
15	24-4	103 Lamoine Beach Rd	\$44,000	\$81,600	
15	24-5	111 Lamoine Beach Rd	\$44,200	\$71,200	
15	25	69 Lamoine Beach Rd	\$33,300	\$131,200	
15	26	83 Lamoine Beach Rd	\$32,500	\$50,100	
15				\$4,643,500	
15		total dwellings		48	
15		Average Dwelling value		\$96,740	
15		Average household size, 2010 fed cen		2.25	
15		Estimated population		108	
15		Percent of Lamoine pop *		6.74%	*Lamoine pop: 1,602, 2010 census

Marlboro Beach Road Residency

Marlboro Map	Beach Rd Lot #	Local?	address
16	1	N	149 Marlboro Beach Rd
16	3	N	131 Marlboro Beach Rd
16	4	N	119 Marlboro Beach Rd
16	5	Y	111 Marlboro Beach Rd
16	6	Y	103 Marlboro Beach Rd
16	7	N	91 Marlboro Beach Rd
16	8	Y	79 Marlboro Beach Rd
16	43	Y	92 Marlboro Beach Rd
16	44	Y	28 Ford Ln
16	46-1	N	28 Mermot Ln
16	46	N	102 Marlboro Beach Rd
16	47	N	110 Marlboro Beach Rd
16	48	Y	101 Lupine Ln
16	49	Y	3 Starfish Ln
16	49-1	N	8 Brown Ln
16	50	N	15 Brown Ln
16	51-1	Y	148 Marlboro Beach Rd
16	52	Y	160 Marlboro Beach Rd
total properties		18	
total Lamoine tax addresses		9	

END.

TESTIMONY

Lamoine Planning Board

November 9, 2017 – Lamoine Consolidated School

Harold MacQuinn, Inc. application for gravel extraction/expansion of Kittredge Pit

I am Kathryn Gaianguet. I live at 128 Great Ledge Road.

This testimony addresses the three documents relevant to review of this application:

1. Lamoine Site Plan Review Ordinance, *F. 1, 2, 3: Purpose* (p. 3)
2. 2011 Lamoine Gravel Ordinance, *Sec. 7.D.6: Will not adversely affect surrounding properties.*
3. 1996 Comprehensive Plan: *survey techniques used.*

I am the primary researcher on a study that Dr. Gallagher (Jim) and I conducted during the month of September, 2017. Here is why we decided to do the study.

As part of living in Lamoine, Jim and I have often heard people say: "The gravel industry in this town makes it difficult to sell our home." Or, "We have been told that the sale price of our home is lower because we live in 'the gravel town.'" [Testimony and letters submitted during the September 27th first part of this hearing echo these concerns.]

Jim Gallagher and I are experienced sociology researchers. We decided that the only way to understand these community ideas was to conduct a systematic study. We identified realtors selling property in Lamoine as our best sources of data. The study we conducted was carried out with the research mandates and rigor of the sociological discipline. I will summarize the results of the survey we conducted, and present the fully compiled data as part of our packet of materials for this testimony.

However, before we review the data, I must address the September 27th hearing testimony of Attorney Bearor related to our study. Putting aside his derogatory tone and references, we kindly describe Mr. Bearor's critique of our study as misleading and erroneous. His presentation of one realtor's email as data, his challenge of our offering anonymity to our respondents, and his subsequent reasons to dismiss our study at best represent his ignorance (meaning lack of knowledge) of the research process. Because we need to address his testimony, I ask for more time, if needed, for our presentation.

At the core of Mr. Bearor's presentation was a challenge of our statement to realtors receiving our questionnaire: "*All of your answers will be treated with complete confidentiality. All data will be presented only in summary form.*" (At the end of the questionnaire.) Please note: an additional statement was at the end of a **cover letter** accompanying all questionnaires (attached to this testimony), which Mr. Bearor did *not* include in his presentation. It reads: "Your responses will be *completely anonymous*. All results will be presented *only in summary form*. No names, either personal or company, will be shared with any other parties. All questionnaires will remain only in our possession and will be destroyed at the point of resolution of this pit application."

This statement is a standard for all social science research, mandated as part of human subjects research requirements. Anonymity has two very important components:

1. It's sources come from past studies that abused, intimidated, caused psychological and physical damage, and other consequences to the research subjects. Most importantly, it is necessary to

protect the respondent from intimidation, denigration, or retribution. Therefore, the guarantee of anonymity allows the respondent full protection to answer questions fully and without reservations.

2. Anonymity is required to reduce the effect of any bias that would be brought into the analysis and interpretations of the data through the researcher or readers knowing the identity of the respondent.

It is suffice, as further response to Mr. Bearor's critique of our study, to reference the 1996 Comprehensive Plan. The introduction to the 1991 "Household Survey—Town of Lamoine—91" found in Appendix 4, reads: "THIS SURVEY IS NECESSARY TO MEET THE STATE'S REQUIREMENTS FOR COMPREHENSIVE PLANNING. ANSWERING IS TOTALLY VOLUNTARY. SKIP QUESTIONS YOU FEEL ARE INAPPROPRIATE OR THAT YOU PREFER TO OMIT. PLEASE DO NOT PUT YOUR NAME ON THIS SHEET. (Other instructions about how to complete...)

The four main questions a social science researcher would ask Mr. Bearor are: a) How did you come by this information? b) What are the relationships between the realtor and Mr. MacQuinn? (Do they meet socially, in business groups, etc.?); c) Did the realtor know, when he sent his email to Mr. MacQuinn, that he would be *named personally* and have his email presented, as testimony in these hearings?; d) Did the realtor knowingly give his permission?

Mr. Bearor presented alternative data—tax assessments—as a counter measurement of impacts of gravel operations on property values. We respectfully critique these data: 1) tax assessments have no relationship to property values; and 2) tax assessment criteria do not include the proximity of a property to gravel pits, and therefore are neither a valid nor reliable measurement of the impact of gravel operations on property. As researchers, we also must point out that the naming and reference to a Planning Board member's tax assessment is considered a form of personal violation of the subject in the research community.

One further point needs to be made: It is a requirement in social science that data be collected from many respondents, and that the data be compiled in aggregate form, not only for anonymity, but also to identify variances and trends which are far more reliable in interpreting people's beliefs and behavior.

A report of our research gives the opportunity to exemplify this:

We mailed, or delivered, 30 questionnaires to all realtors with currently listed home sale properties in Lamoine as of August 18, 2017. We included a cover letter (in your packet along with the questionnaire) and a self-addressed/stamped envelope for returning the questionnaire.

One packet was returned as non-deliverable—so our research base is 29 realtor respondents. Ten (10) realtors returned completed questionnaires. This is a 34% response rate, very high for mailed questionnaires.

Here are the highlights of realtor responses:

1. Six of the ten realtors say that the presence and expansion of gravel pits affects—some or a great deal--the *price they propose* to sellers for their homes in Lamoine. One persons says it varies, specifically by the nearness to a pit, two say it makes little or no difference.
2. The *marketability of a home* is significantly affected by its *nearness to a pit*. Nine (9) realtors said that *proximity to a pit* affects a buyer's willingness to consider a property, either before or after a viewing.

3. Realtors split about half and half on their *desire to show a property to a prospective buyer*, again dependent on the *location of the pit*.
4. We presented options of possible effects of "the excavation of 'Cousin's Hill'" in the center of Lamoine, with persons being able to check all that applied.
 - Three (3) said it will *reduce the attractiveness of the Town as a place to live*.
 - Five (5) said it will *decrease property values in the surrounding area* (one responded "perhaps")
 - Two (2) said it will have a *negative impact on property values in other parts of Lamoine*. (One answered "not sure")
 - Two (2) responded that this pit will *discourage prospective buyers from viewing properties in any part of Lamoine*.
 - Three (3) realtors said that this proposed excavation will have *no affect on property values*.
5. To the question: "The gravel industry in Lamoine (check all that apply)", responses varied:
 - 1 realtor is *discouraged from listing properties in Lamoine*
 - 2 realtor find the presence of the industry *discourages clients from viewing Lamoine properties*.
 - 4 realtors often or sometimes *are discouraged from showing properties in Lamoine*.
 - 6 realtors checked "*Does not affect willingness to promote or view properties in Lamoine.*"

We left sections for respondents to explain their answers, and make comments. The most frequent comments were:

Marketability—or how many buyers interested in a property—is greatly affected by proximity to a working pit. Water quality (affect of abutting pit on household wells), extraction noise, and extent of truck traffic are the other main concerns. There is consensus that properties abutting or near the extraction sites are greatly impacted, and that Lamoine property distanced from extraction activities is generally not affected, unless it is on a main road with trucks constantly driving by. Some expressed the feelings that so many heavy trucks—especially trucks traveling at high speeds, are a safety hazard.

In conclusion:

Attorney Bearor's presentation of information from one realtor has provided us with the perfect example that one response does not represent the responses of many, and that it is impossible to generalize social phenomenon without a larger survey.

As Dr. Gallagher's and my study shows, there is a variable, but predominantly *negative impact of gravel extraction in Lamoine on property values and marketability, and that the most significant impact is on the properties surrounding operating gravel pits.*

[Cover letter accompanying the Lamoine Real Estate Questionnaire—September 2017]

FROM: Kathryn Gaianguest and James Gallagher

TO: Realtors listing properties in Lamoine – past and present

RE: Sale values of homes in Lamoine

Please note: requesting quick response—Sept. 20, 2017

It has been a concern of Lamoine citizens for some time that the values of their homes are different from comparable properties in other communities (e.g., Blue Hill, Hancock) because of the presence of the gravel industry in our Town.

Town citizens are preparing for a September 27, 2017, public hearing on a proposal for excavating all of Cousins Hill on Rte. 184 in the center of town. This is the highest hill in Lamoine—240'--known for the large cross on its summit. The proposal is to remove all the hill to 30' below road level.

We need the best possible information in assessing the impact of this proposed extraction on neighbors to the pit, and on the whole town. As two retired sociology researchers, we have decided to gather systematic information about the possible relationship of the gravel industry to property values in the community.

Attached is a short questionnaire. Please use question 7, at the end, to share additional comments.

Your responses will be *completely anonymous*. All results will be presented *only in summary form*. No names, either personal or company, will be shared with any other parties. All questionnaires will remain only in our possession, and will be destroyed at the point of resolution of this pit application.

NOTE: Please respond by September 20, 2017.

A stamped, addressed envelope is enclosed.

Or you can send the questionnaire electronically to: kathryn.gaianguest@maine.edu

We deeply appreciate your help and assistance in this survey.

LAMOINE REAL ESTATE QUESTIONNAIRE

1. Have you listed a property in Lamoine in the last:

5 years: ☐ Yes ☐ No

10 years: ☐ Yes ☐ No

2. Have you sold a property in Lamoine in the last:

5 years: ☐ Yes ☐ No

10 years: ☐ Yes ☐ No

If you answered Yes above please answer all questions below: (If No please go to Q. 4 - 7)

3. Does the presence and expansion of gravel pits affect the price you propose to sellers of homes/property in Lamoine:

☐ Great deal of effect

☐ Some effect

☐ Little effect

☐ No effect

Please explain: _____

4. Does the proximity to a gravel pit negatively affect:

a. the market value of a property?

☐ Yes ☐ No

b. your desire to show a property to a client?

☐ Yes ☐ No

c. a client's willingness to consider a property (either before or after a viewing)

☐ Yes ☐ No

Please explain: _____

[Lamoine Real Estate Questionnaire, Cont.]

5. The excavation of the "Cousin's Hill" in the center of Lamoine will: *(check all that apply)*
☐ reduce the attractiveness of the Town as a place to live.

☐ decrease property values in the surrounding area.

☐ have a negative impact on property values for most other areas of Lamoine.

☐ discourage prospective buyers from viewing properties in Lamoine.

☐ not affect property values.

6. The gravel industry in Lamoine (check all that apply):

☐ Discourages me from listing properties in the town

☐ Discourages my clients from viewing properties in Lamoine

☐ Often or sometimes prevents me from showing properties in Lamoine

☐ Does not affect willingness to promote or view properties in Lamoine

7. Are there any other issues that you feel need to be considered?

All of your answers will be treated with complete confidentiality. All data will be presented only in summary form. If you wish any further information, please contact us at:

Telephone: 207-667-1282

Address: 128 Great Ledge Road, Lamoine, ME 04605

Please return in pre-addressed, stamped envelope, or electronically to: kathryn.gaianguest@maine.edu

Thank you very much for your time and consideration.

Kathryn Gaianguest, Sociologist, Assoc. Professor Emerita, University of Maine

James Gallagher, Sociologist, Assoc. Professor Emeritus, University of Maine

Lamoine Real Estate Questionnaire--September 2017

Study conducted by: Dr. Kathryn Gaianguest and Dr. James Gallagher

Submitted to Lamoine Planning Board Public Hearing—November 9, 2017

Tabulation of Answers

****Note:** The cover letter and blank questionnaire which each realtor received are attached for full information.

****Note:** NA = No answer**

1. Have you listed a property in Lamoine in the last:

	Yes	No	NA
5 years	10	0	
10 years	6	1	3

2. Have you sold a property in Lamoine in the last:

	Yes	No	NA
5 years	7	1	2
10 years	7	1	2

If you answered Yes above please answer all questions below: (If No, please go to Qs. 4-7)

3. Does the presence and expansion of gravel pits affect the price you propose to sellers of homes/property in Lamoine:

Great deal of effect	1
Some effect	5
Little effect	2
No effect	1
Variable	1

Please explain:

- It depends on the proximity to the pit as well as how active the gravel pit is.
- Pit doesn't affect price but definitely affects "marketability", ie. how many buyers will be interested in property.
- Gravel pits have not affected any sites for me.
- Entirely dependent on location of subject property and how exposed it would be to gravel extraction noise, truck traffic.
- Much of Lamoine is not impacted by gravel extraction, but some areas are greatly.
- It depends on the property location to the pit. Neighbor, yes. Traffic, noise if an abutter would greatly effect this property.
- Truck traffic.
- If reasonable proximity to "pits", price and demand can be affected.
- It depends on the buyer, frequency of gravel transport, noise level, etc. It has very little effect unless directly located nearby.

[Lamoine Real Estate Questionnaire, Tabulation of Answers, Cont.]

4. Does the proximity to a gravel pit negatively affect:

	Yes	No	NA
a. the market value of a property?	8	1	1
b. your desire to show a property to a client?	4	5	1
c. a client's willingness to consider a property (either before or after a viewing):	9	1	0

Please explain:

- If a home is in very good condition—a buyer may be more likely to consider it if it's near a pit. It's very situational.
- No unless right next to working pit's noise, dust, etc. Affects marketability.
- These answers are yes based on a property being right next door to a pit only.
- If you can hear gravel extraction=very bad. If trucks are constantly driving by subject property and have little buffer=very bad. Otherwise, not much difference to most buyers.
- If the property is next to the gravel pit=yes.
- Again, it would depend on activity if you are an abutter "greatly".
- Trucks & Equipment noise.
- If gravel trucks are on the road past a property I'm showing I make sure the sellers are aware of the business.
- Noise and visual considerations impact buyers' interest greatly. Proximity is a big variable.
- All subjective to the buyer—frequency of transport, noise level etc. Close proximity could be a negative.

5. The excavation of the "Cousins' Hill" in the center of Lamoine will: *(check all that apply)*

Reduce the attractiveness of the Town as a place to live.	3	1 "it depends"
Decrease property values in the surrounding area.	5	1 "perhaps"
Have a negative impact on property values for most other areas of Lamoine.	2	1 "not sure"
Discourage prospective buyers from viewing properties in Lamoine.	2	1 "it depends"
Not affect property values.	3	

6. The gravel industry in Lamoine *(check all that apply)*:

Discourages me from listing properties in the town.	1
Discourages my clients from viewing properties in Lamoine.	2
Often or sometimes prevents me from showing properties in Lamoine.	4
Does not affect willingness to promote or view properties in Lamoine.	6

7. Are there any other issues that you feel need to be considered?

- Most buyers not at home during working hours of pit. Bigger issue is truck traffic on main roads.
- Water quality, extraction noise, and fill truck traffic are the main value concerns. Most of Lamoine will be unaffected. Properties near the extraction site will be highly impacted.

[Lamoine Real Estate Questionnaire, Tabulation of Answers, Cont.]

7. Are there any other issues that you feel need to be considered? [Cont.]

--As mentioned under #5, what is the end result after excavation. The town may want to stipulate grassing, put guidelines on end result.

--Trucks travel ling on Douglas Highway often go above posted limit and visibility from many driveways is limited so high risk of crashes.

--The only pit I feel is justified in Lamoine is Jay Fowler's. He is a resident of Lamoine, makes his livelihood from the pit, has done a lot for the town and is a peach of a guy, as is his son.

--There are many factors that affect values in Lamoine, some good, some not so good. The school & budget support is a negative with buyers. I don't feel the gravel issue affects values—if no, not hugely and depends on proximity.

--As a realtor, I'm usually game to try a listing. But proximity to pits affect buyers greatly.

STATE OF MAINE
HANCOCK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-11-04

DOUG GOTT & SONS, INC.,

Plaintiff,

v.

DECISION AND ORDER ON
80B APPEAL

TOWN OF LAMOINE,

Defendant.

This matter is before the Court on Plaintiff Doug Gott & Sons, Inc.'s M.R. Civ. P. 80B appeal from the denial of its permit application by the Town of Lamoine's Planning Board. Plaintiff makes an independent claim for declaratory judgment on the constitutionality of section 7(D)(6) of the Lamoine Gravel Ordinance. After review, the Court affirms.

BACKGROUND

Plaintiff owns and operates a gravel pit in Lamoine, Maine, and sought a permit in October of 2009 seeking to expand its gravel operations to an adjacent lot that was also under its ownership. Lamoine's Gravel Ordinance requires that a person seeking to extract gravel must acquire a permit, and Lamoine's Site Plan Ordinance requires that a site plan be approved. Plaintiff filed for both a permit and site plan approval on November 11, 2010. After a public hearing, the Lamoine Planning Board denied Plaintiff's applications. During the hearing, the Planning Board considered testimony from Plaintiff and the public. Plaintiff appealed both decisions of the Planning Board to the Lamoine Zoning Board of Appeals ("ZBA"), which consolidated the appeals, and reversed the Planning Board with respect to the Site Plan Approval.¹ The ZBA also reversed the Planning Board's determination that Plaintiff's proposed use would not "conserve natural beauty," but it affirmed the conclusion that the use would have an adverse impact on surrounding properties.

¹ The Planning Board subsequently moved the ZBA to reconsider its decision regarding the Site Plan, however, after an additional hearing, the ZBA confirmed its prior decision.

Ultimately, the ZBA affirmed the denial of Plaintiff's request for a gravel permit. Plaintiff now appeals to this Court pursuant to 5 M.R.S. §§ 11001-11008 (2012) and M.R. Civ. P. 80B.

DISCUSSION

I. Standard of Review

This Court reviews adjudicatory decisions of a Planning Board "for abuse of discretion, errors of law, or findings not supported by the substantial evidence in the record." *Wyman v. Town of Phippsburg*, 2009 ME 77, ¶ 8, 976 A.2d 985; *Save Our Sebasticook, Inc. v. Bd. Of Environmental Prot.*, 2007 ME 102, ¶ 13, 928 A.2d 736. A Court will "not vacate an agency's decision unless it: violates the Constitution or statutes; exceeds the agency's authority; is procedurally unlawful; is arbitrary or capricious; constitutes an abuse of discretion; is affected by bias or an error of law; or is unsupported by the evidence in the record." *Kroeger v. Dep't of Env'tl. Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566. The Court will affirm findings of fact if they are supported by "substantial evidence in the record." *S.D. Warren Co., v. Bd. of Environmental Prot.*, 2005 ME 27, ¶ 22, n.10, 868 A.2d 210. Substantial evidence exists when there is any competent evidence in the record to support a finding. *Friends of Lincoln Lakes v. Bd. of Environmental Protection*, 2010 ME 18, ¶ 14, 989 A.2d 1128. A party seeking to vacate a state or local agency decision bears the burden of persuasion on appeal. *Bizier v. Town of Turner*, 2011 ME 116, ¶ 8, 32 A.3d 1048; *Anderson v. Me. Pub. Employees Ret. Sys.*, 2009 ME 134, ¶ 3, 985 A.2d 501.

This Court will review directly the decision of the agency or officer that acted in a de novo or fact-finding capacity, without deference to intermediate appellate review by the Board of Appeals, *Mills v. Town of Eliot*, 2008 ME 134, ¶¶ 13-16, 955 A.2d 258, *Yates v. Town of Southwest Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168, unless, the local ordinance directs the Board of Appeals to hear evidence and decide facts in a de novo review. *Aydelott v. City of Portland*, 2010 ME 25, ¶¶ 9-10, 990 A.2d 1024.

This Court will interpret a local ordinance de novo as a matter of law. *Aydelott v. City of Portland*, 2010 ME 25, ¶ 10, 990 A.2d 1024; *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 10, 836 A.2d 1285. The ordinance

will be examined for its plain meaning in light of its purposes, objectives, and general structure. *Stewart v. Town of Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27. If the ordinance is clear on its face, the Court will not examine extrinsic evidence to determine meaning. *Rudolph v. Golick*, 2010 ME 106, ¶ 9, 8 A.3d 684. However, "local characterizations or fact-findings as to what meets ordinance standards will be accorded 'substantial deference.'" *Id.*, ¶ 8, 8 A.2d at 684; *Jordan v. City of Ellsworth*, 2003 ME 82, ¶ 9, 828 A.2d 768 (internal citations omitted).

II. Analysis

As a preliminary matter, the Court must identify the last de novo decision-maker in order to conduct its review. In this case, the parties agree that the last de novo decision-maker was the Planning Board. Based on the ordinance and the record before the Court in this case, the Court will not, therefore, give deference to the review by the Board of Appeals. *Mills*, 2008 ME 134, ¶¶ 13-16, 955 A.2d 258.

A. *Adverse Affect on Surrounding Properties*

Plaintiff first appeals from the finding of the Planning Board that its proposed use would "adversely affect surrounding properties." The Lamoine Gravel Ordinance states:

The Planning Board shall, after the submission of a complete application including all the information requested, and after review of the most recent Code Enforcement Officer compliance report and any other available enforcement information available with respect to the gravel pit in question, grant a permit if it makes a positive finding based on the information presented that the proposed operation:

1. Will not unreasonably result in unsafe or unhealthful conditions.
2. Will not unreasonably result in erosion or sedimentation.
3. Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds.
4. Will conserve natural beauty in keeping with the restoration provisions of [the] ordinance.

5. Will not adversely affect public ways.
6. Will not adversely affect surrounding properties.
7. Is in conformance with the performance standards of Section 8.

(Lamoine Gravel Ordinance, section 7(D).)

In particular, Plaintiff contends that the Planning Board's conclusion on this issue is not supported by "substantial evidence" in the record and was clearly erroneous. (Pl.'s Brief at 7.)² Lamoine, on the other hand, contends that substantial evidence existed to support the Planning Board's conclusion.³

The Law Court has stated that "[s]ubstantial evidence is evidence that a reasonable mind would accept as sufficient to support a conclusion. *York v. Town of Ogunquit*, 2001 ME 53, ¶ 6, 769 A.2d 172 (internal quotations omitted). "We may not substitute our own judgment for that of the Board." *Id.* However, "[t]he findings of a planning board must be sufficient to apprise either [the Court] or the parties of the basis for their conclusion. Although an agency is not always required to issue a complete factual record, written factual findings must be sufficient to show the applicant and the public a

² Plaintiff contends that the Planning Board heard no testimony at its public hearing on the matter capable of supporting its factual conclusion that the use would adversely affect surrounding properties. Therefore, Plaintiff asserts that the Planning Board abused its discretion. Plaintiff argues that the public testimony "was almost exclusively comprised of community members' generalized displeasure with gravel extraction in Lamoine. (Pl.'s Brief at 7.) Plaintiff admits that one community member offered "substantive," and "compelling" testimony regarding noise and dust created by gravel operations, but contends that Plaintiff "did not identify the offending trucks as those of Plaintiff." (Pl.'s Brief at 8.) As a result, Plaintiff asserts that "[i]n the absence of evidence demonstrating a measurable and objectively unreasonable impact caused by Plaintiff's proposed use . . . , there was no legitimate basis for the Board's determination. . . ." (Pl.'s Brief at 8.)

³ Lamoine asserts that the public testimony raised specific concerns about the proposed "additional" gravel pit with respect dust impact on vegetation, homes, air quality, erosion, water quality, visual appeal, danger to children, decreased property values, encroachment into residential areas, removal of natural buffers, irreparable loss of wild areas, and noise pollution. (Lamoine Brief at 4-5.)

rational basis [for] its decision." *Bodack v. Town of Ogunquit*, 2006 ME 127, ¶ 14, 909 A.2d 62 (internal citations omitted).

In this case, the Planning Board was required to determine that the proposed operation in question would not adversely affect surrounding properties. (Lamoine Gravel Ordinance, Section 7(D)(6).) The Planning Board made the following findings:

The board has heard testimony at two Public Hearings regarding the intrusion of gravel mining operations further into the residential neighborhoods to the west and north of this location. Some residents question the impact of this expansion on the property values of neighboring properties.

Further, the applicant stated more than once that this holds little value as a site for 'excavation' and 'extraction' of gravel as there is, to quote the applicant's representative, "not really very much gravel in there." Excavation and extraction are two essential reasons for a gravel pit, as stated in Section 1 of the Lamoine Gravel Ordinance. As present, Gott & Sons owns considerable acreage adjacent to and nearby the proposed B&H expansion area. This acreage could be used for the storage purposes noted as the primary reason for the application. In short, the 'gain' to the applicant does not outweigh the loss to neighbors and residents of the town.

Citizen testimony and the failure of the applicant to justify the need for a gravel pit in this location convinced the majority of the Planning Board that the proposal would adversely affect surrounding properties.

(Planning Board Findings at 5.)

Substantial evidence exists that could have supported the Planning Board's determination that property values would be adversely impacted by granting the requested permit. *Hutz v. Alden*, 2011 ME 27, ¶ 15, 12 A.3d 1174 ("Property owners, by reason of their ownership alone, may state their opinion as to the fair market value of their property"). At the December 7, 2011, public hearing held on

Plaintiff's application, the Planning Board considered the Plaintiff's application materials, testimony from the Plaintiff, and testimony from the public. The hearing lasted for approximately 18 minutes and several members of the public voiced concerns about the impact the increased gravel operations would have on the town and their quiet enjoyment of their properties. The Board also heard testimony on noise pollution, property devaluation, and dust. One resident stood and played an audiotape that she had recorded from her porch three days before the hearing of the truck noise from gravel operations near her home. (Hearing at 13:39.) The Planning Board meeting minutes noted: "The frequency and noise of these trucks render normal conversation difficult." (Exhibit E). This same resident also complained of the grime and soot that attached to her house as a result of these activities. A reasonable person could infer from the above testimony that permitting increased gravel extraction operations in this neighborhood might result in adverse impacts like those experienced in other Lamoine neighborhoods.

The Planning Board's balancing of the harms approach was harmless error because it needed only determine that surrounding properties would be adversely affected to deny the permit. See M.R. Civ. P. 61. Reduction of property value is certainly an adverse effect and is alone sufficient to support the Planning Board's conclusion. According, this Court holds that the Lamoine Planning Board did not abuse its discretion in denying Plaintiff's permit request.

B. Constitutionality of Section 7(D)(6)

Plaintiff's next argument is that section 7(D)(6) of the Lamoine gravel ordinance is unconstitutionally vague on its face. Plaintiff also argues that section 7(D)(6) permits the zoning board to "express legislative-type judgment and the value of a particular use rather than limiting its review to a consideration of whether an applicant has satisfied enumerated, objective criteria contained in the ordinance." Section 7(D)(6) states, "the Planning Board shall . . . grant a permit if it makes a positive finding based on the information presented that the proposed operation . . . will not adversely affect surrounding properties."

The constitutionality of a zoning ordinance is presumed, *Gorham v. Cape Elizabeth*, 625 A.2d 898, 900 (Me.

1993), and Maine Courts will seek to construe an ordinance to preserve its constitutionality. *Town of Baldwin v. Carter*, 2002 ME 52, ¶ 9, 794 A.2d 62, 66-67. A party challenging an ordinance's constitutionality bears the burden of proof. *Id.* The Court treats the concept of vagueness and unlawful delegation as one challenge because both are concerned with the issue of definiteness. *Uliano v. Board of Environmental Protection*, 2009 ME 89, ¶ 15, 977 A.2d 400, 408. A challenged ordinance will be constitutionally definite enough if it is applied using objective, quantitative, and measurable standards. *Id.* 2009 ME 89, ¶ 14; *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 17, 752 A.2d 183.

The Standard is also not constitutionally deficient simply because it is not couched in empirical terms [The Law Court] has previously recognized that objective qualification, mathematical certainty, and absolute precision are not required by either the United States Constitution or Maine Constitution [there need only be] an intelligible principle to which the person or body authorized to act is directed to conform.

Uliano, 2009 ME 89, ¶ 30 (internal citations and quotations omitted).

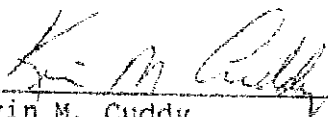
Here the term, "not adversely affect surrounding properties" is not indefinite. This language is included in the Gravel Ordinance, which has the functional effect of tying the definition of "adversely affect" to common gravel extraction impacts. By its own terms, the Lamoine Gravel Ordinance identifies multiple impacts associated with gravel extraction, including erosion and runoff (including an express reference to adverse affect on adjoining properties), groundwater pollution, scenic impacts, vegetation impacts, spillage and leakage from transportation, open access dangers to the public, nighttime operations, and noise. (Lamoine Gravel Ord., section 8(A)-(H).) All of these impacts may reasonably be construed as adversely affecting surrounding properties by impacting the use, enjoyment and values of those properties. The logical construction of section 7(D)(6) reads it in the context of the gravel ordinance as a whole. In that context, the challenged term provides measurable, cognizable, and quantitative standards by which the board must make its decision. See *Uliano v. Board of*

Environmental Protection, 2009 ME 89, ¶ 25, 977 A.2d 400; *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 901-902 (Me. 1993) (criteria that use will not "adversely affect the value of adjacent property" sufficiently definite).¹ Similarly, applicants seeking to operate a gravel pit are placed on sufficient notice of the necessity of avoiding adverse gravel effects on surrounding properties. The Court further notes that the section 7(D)(6) requires that the adverse effects be on surrounding properties. Thus, while the listed impacts of gravel extraction are common among all gravel pits, the Board may only deny a permit when these effects will adversely impact surrounding properties. Here, the Board found that multiple residential dwellings were near the proposed gravel pit and determined that its creation would adversely affect these properties.

The entry is:

1. The decisions of the Town of Mt. Desert's Code Enforcement Officer and Zoning Board of Appeals are affirmed.
2. At the direction of the Court, this Order shall be incorporated into the docket by reference pursuant to M.R. Civ. P. 79.

Dated: December 5, 2012


Kevin M. Cuddy
Justice, Superior Court

¹ Gott argues that this case is analogous to *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 17, 752 A.2d 133, as evidenced by the Law Court's "signal" in *Conservation Law Foundation v. Town of Lincolnville*, 2001 ME 175, ¶ 7-9, 786 A.2d 616. The Court is unconvinced. In *Conservation Law Foundation*, the Law Court stated in dicta that a criterion requiring that a development not have an "undue adverse effect on the scenic and natural beauty of the area" requires a subjective analysis and cited to *Kosalka*. Gott contends that the implication of this language is a "likelihood that the Law Court will declare an ordinance prohibiting an 'adverse effect' unconstitutionally vague." (Pl.'s Reply at 4.) This contention is unpersuasive because the citation to *Kosalka*, which held the language "conserve natural beauty" to be unconstitutional, clearly implicates the "scenic and natural beauty" language of the criterion in *Conservation Law Foundation*, rather than the "adverse effect" portion of that same criterion.

CSWC – MacQuinn Site Plan Review Permit denial appeal – Review Standard #1

To: Lamoine Board of Appeals

From: John Holt, on behalf of Cold Spring Water Company

Re: Harold MacQuinn appeal of denial of Site Plan Review permit by Planning Board

Date: March 12, 2018

I encourage the Board of Appeals to uphold the Planning Board's denial of a Site Plan Review Permit sought by Harold MacQuinn, Inc. for an additional 48 acres, expanding the currently permitted area from about 60 acres to 108 acres.

The Planning Board found that MacQuinn's application failed to satisfy Review Standard 1. This review standard is two paragraphs long and thus cannot be reduced to the shorthand "preserve and enhance the landscape" section heading and do justice to its many concerns.

The appeal notes that gravel extraction cannot help but alter the landscape, as if that obvious fact somehow renders this review standard irrelevant and not applicable. I would agree with Mr. Bearor that by its very nature, gravel extraction is the opposite of preservation of the natural landscape. It involves the removal of all trees and shrubs, the disturbance of all soil and vegetation, and the destruction of all habitat in the areas where extraction occurs. In light of that simple observation that gravel extraction so profoundly alters the landscape, one could reasonably ask, "How could this standard ever be met? How could the Planning Board ever have issued Site Plan Review permits for gravel extraction? Yet the Board certainly has." It has applied this standard because the standard must be understood in light of the purpose of the Site Plan Review Ordinance.

One of the stated purposes of the Site Plan Review Ordinance is "to balance the rights of land owners to use their land with the corresponding rights of abutting and neighboring landowners..." In other words, is the activity on a parcel suitable in the larger context of the abutting and neighboring parcels? What is the appropriate balance? Many of the currently permitted gravel operations in Lamoine abut other gravel extraction operations, not residential areas, and thus the removal of significant portions of the land from either parcel does not adversely impact the other. Also many of the currently permitted gravel

operations, especially those seen behind the transfer station and further east to the extensive Goodwin operations, operate over perched water tables which restrict the depth to which they can be excavated such that the final elevations will be at levels which from public roadways and abutting properties will seem visually appropriate. Some gravel operations are relatively small and the amount of material available for extraction accordingly small, with relatively small impact on the topography.

Such is not the case with this proposal. The landscape within the applicant's boundaries must be seen in the large context of the landscape of the surrounding area. The areas on MacQuinn's parcels which already have Site Plan Review permits are largely confined to the northern flank of the heart of Cousins Hill as it lies from west to east. This area, when finally graded to Gravel Ordinance Standards, could create a landscape compatible with the larger context. However, the applicant seeks a Site Plan Review permit that would enable him to remove the summit and the southern flank of the Cousins Hill, that is, the entire thing. Where once hills stood, a valley would be created. The proposed extraction would create a massive 108-acre gravel pit: nearly a third of a mile wide along Douglas Highway, over a half mile long from west to east with hilltops over 200 feet above sea level reduced by as much as 150 feet, well below the elevation of Douglas Highway. Even with decent restoration of the surface of the resultant valley, not even a semblance of the existing landscape will be maintained and preserved. On this basis alone, this review standard cannot be satisfied.

Review standard #1 also calls for the maintenance and preservation of unique natural features. It is well known that the expansive esker of which Cousins Hill is a part is also an integral part of what has been called the glacial ice age trail. Please be sure to read the informative articles contained in the public testimony submission of Catherine deTuede. The esker's ability to absorb extensive heavy rains, which in other settings could create massive runoff, and then to filter that rain water downward to both perched and deeper water tables is essential in maintaining and preserving the aquifer at its base.

A large wetland within the proposed excavation area faces an uncertain survival as excavation all around it will leave it isolated, high and likely dry, as it were. Placing a 25-foot setback around the wetland hardly deals with the threat to the wetland once excavation all around it lowers the abutting elevations well below the wetland.

On hundreds of occasions over the years I have hiked and snowshoed along trails existing along the southern flank of Cousins Hill and can testify to the many heavily wooded steep slopes that will be obliterated. These steep and wooded hillside are slated for removal should a site Plan Review Permit be obtained.

One further consideration I wish to share with you. It is not enough to simply note the concerns of the residents and landowners with respect to water, property values, noise, traffic, particulates and the like. There is a sense of profound emotional impact should the “hill” be removed and hauled away, truckload by truckload, as if the hill were simply a commodity.

Please read all of the public testimony. However, I wish to read a portion of a most thoughtful letter submitted by Charlotte Stephens:

“It is important to consciously acknowledge the things that feed the spirit, so that they are handled carefully, and regarded as valuable. So they are not misplaced or ruined without realizing the consequence. Cousins is more than a local hill. It defines the contours of the village. Its solid bulk is comforting and speaks of home. These are not gifts to be taken lightly. Whether realized or not, Cousins Hill contributes a great deal of the aesthetic, and ambiance, of Lamoine. Its loss would have huge ramifications for property values, wildlife integrity, and the loveliness of our area. The loss to our inner world, the part that registers peace and beauty, even subconsciously, would be profound.